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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

22 Shopko Stores Operating Co., LLC,
23 Plaintiff,
24 vs.
25 Balboa Capital Corporation,
26 Defendant.

Case No. 8:16-cv-99 JLS (KESx)

**ORDER RE:
STIPULATED PROTECTIVE
ORDER**

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve proprietary business and confidential
17 employee information for which special protection from public disclosure and from
18 use for any purpose other than prosecution of this action is warranted. Such
19 confidential and proprietary materials and information consist of, among other
20 things, confidential business or financial information, commercial information
21 (including information implicating privacy rights of third parties), employee
22 information, information otherwise generally unavailable to the public, or which
23 may be privileged or otherwise protected from disclosure under state or federal
24 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
25 flow of information, to facilitate the prompt resolution of disputes over
26 confidentiality of discovery materials, to adequately protect information the parties
27 are entitled to keep confidential, to ensure that the parties are permitted reasonable
28 necessary uses of such material in preparation for and in the conduct of trial, to

1 address their handling at the end of the litigation, and serve the ends of justice, a
2 protective order for such information is justified in this matter. It is the intent of the
3 parties that information will not be designated as confidential for tactical reasons
4 and that nothing be so designated without a good faith belief that it has been
5 maintained in a confidential, non-public manner, and there is good cause why it
6 should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: this pending federal law suit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
 2 House Counsel does not include Outside Counsel of Record or any other outside
 3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
 5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
 7 party to this Action but are retained to represent or advise a party to this Action and
 8 have appeared in this Action on behalf of that party or are affiliated with a law firm
 9 which has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
 11 employees, consultants, retained experts, and Outside Counsel of Record (and their
 12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
 16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 18 and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
 20 designated as "CONFIDENTIAL."

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
 22 Material from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
 25 Protected Material (as defined above), but also (1) any information copied or
 26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 27 compilations of Protected Material; and (3) any testimony, conversations, or
 28 presentations by Parties or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
8 with or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber the case development process or to
24 impose unnecessary expenses and burdens on other parties) may expose the
25 Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains protected material.

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and
15 before the designation, all of the material made available for inspection shall be
16 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine
18 which documents, or portions thereof, qualify for protection under this Order. Then,
19 before producing the specified documents, the Producing Party must affix the
20 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
21 portion or portions of the material on a page qualifies for protection, the Producing
22 Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in depositions, the Designating Party may
25 identify the Disclosure or Discovery Material that qualifies for protection (i) on the
26 record, before the close of the deposition or (ii) provide written notice to the
27 adverse Party within (15) fifteen days of receipt of the written transcript from the
28 stenographer.

1 (c) for information produced in some form other than documentary
2 and for any other tangible items, that the Producing Party affix in a prominent place
3 on the exterior of the container or containers in which the information is stored the
4 legend "CONFIDENTIAL." If only a portion or portions of the information
5 warrants protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party's right to secure protection under this Order for such
10 material. Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court's
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation until the Court rules on the
26 challenge.
27
28

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action,
17 as well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House
20 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
21 Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to
23 whom disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

27 (f) professional jury or trial consultants, mock jurors, and

28 Professional Vendors to whom disclosure is reasonably necessary for this Action

1 and who have signed the “Acknowledgment and Agreement to Be Bound”
 2 (Exhibit A);

3 (g) the author or recipient of a document containing the information
 4 or a custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses, and attorneys for witnesses,
 6 in the Action to whom disclosure is reasonably necessary provided: (1) the
 7 deposing party requests that the witness sign the “Acknowledgment and Agreement
 8 to Be Bound” (Exhibit A) hereto; and (2) they will not be permitted to keep any
 9 confidential information unless they sign the “Acknowledgment and Agreement to
 10 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
 11 ordered by the court. Pages of transcribed deposition testimony or exhibits to
 12 depositions that reveal Protected Material may be separately bound by the court
 13 reporter and may not be disclosed to anyone except as permitted under this
 14 Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting
 16 personnel, mutually agreed upon by any of the parties engaged in settlement
 17 discussions.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 19 IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation
 21 that compels disclosure of any information or items designated in this Action as
 22 “CONFIDENTIAL,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such
 24 notification shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or
 26 order to issue in the other litigation that some or all of the material covered by the
 27 subpoena or order is subject to this Protective Order. Such notification shall include
 28 a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as "CONFIDENTIAL" before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party's
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this Action
10 to disobey a lawful directive from another court.

11 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced
14 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
15 information produced by Non-Parties in connection with this litigation is protected
16 by the remedies and relief provided by this Order. Nothing in these provisions
17 should be construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery
19 request, to produce a Non-Party's confidential information in its possession, and the
20 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the
23 Non-Party that some or all of the information requested is subject to a
24 confidentiality agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the
26 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
27 reasonably specific description of the information requested; and
28

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

If Discovery Material subject to a claim of attorney-client privilege, attorney work product, or any other lawful ground for withholding Discovery Material is inadvertently or unintentionally produced to a Party, such production shall in no way prejudice or otherwise constitute a waiver of any claim of privilege, work product, or other ground for withholding production to which the Producing Party would otherwise be entitled. If a claim of inadvertent production is made with

1 respect to information then in the custody of another Party, and the Receiving Party
2 does not dispute the claim of privilege, work product, or other ground for
3 withholding production, such Party shall promptly return the original and all copies
4 of the information to the Producing Party and the receiving Party shall not use such
5 information for any purpose. If the receiving Party has already shared such
6 information or material prior to a demand for its return, the receiving Party shall
7 promptly notify the other affected person or persons and use best efforts to collect
8 and return all copies.

9 If the receiving Party disputes the claim of privilege, work product or other
10 ground for withholding production, the Challenging Party shall initiate the dispute
11 resolution process under Local Rule 37.1 et seq. If the Parties are unable to resolve
12 their dispute without Court intervention, then the Producing Party shall promptly
13 move the Court for an order compelling return of the material. The receiving Party
14 shall not assert as a ground for opposing the motion the fact or circumstances of the
15 inadvertent production.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in
22 this Stipulated Protective Order. Similarly, no Party waives any right to object on
23 any ground to use in evidence of any of the material covered by this Protective
24 Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in paragraph 4, within 60
5 days of a written request by the Designating Party, each Receiving Party must
6 return all Protected Material to the Producing Party or destroy such material. As
7 used in this subdivision, "all Protected Material" includes all copies, abstracts,
8 compilations, summaries, and any other format reproducing or capturing any of the
9 Protected Material. Whether the Protected Material is returned or destroyed, the
10 Receiving Party must submit a written certification to the Producing Party (and, if
11 not the same person or entity, to the Designating Party) by the 60 day deadline that
12 (1) identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any
14 copies, abstracts, compilations, summaries or any other format reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
18 and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such archival
20 copies that contain or constitute Protected Material remain subject to this Protective
21 Order as set forth in Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 Dated: July 6, 2016

MORGAN, LEWIS & BOCKIUS LLP
Troy S. Brown
Evan K. Jacobs
Brian M Hom
Laura della Vedova

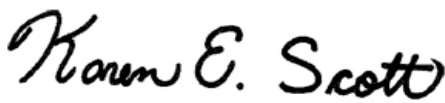
9
10 By /s/ Troy S. Brown
Troy S. Brown
Attorneys for Plaintiff
ShopKo Stores Operating Co., LLC

11
12
13 ASKOUNIS & DARCY, PC

14 By: /s/ Alex Darcy
Alex Darcy
Attorney for Defendant
Balboa Capital Corporation

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16
17
18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

19 DATED: July 08, 2016

20 
21 _____
22 Karen E. Scott
United States Magistrate Judge

23 **FILER ATTESTATION**

24 I, Troy S. Brown, attest that all other signatories listed, and on whose behalf
25 the filing is submitted, concur in the filing's content and have authorized the filing.

26
27 /s/ Troy S. Brown
Troy S. Brown

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____[date] in the case of *Shopko Stores Operating Co., LLC v. Balboa Capital Corporation*, Case No. 8:16-cv-99 (C.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____